IN THE

Supreme Court of the United States

[redacted]

No. [redacted] 48

MOTION OF THE BROTHERHOOD OF RAILROAD TRAINMEN FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960.

No. 713

CARL STILL,

Petitioner,

vs.

THE NORFOLK AND WESTERN RAILWAY COMPANY, A CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA.

MOTION OF THE BROTHERHOOD OF RAILROAD TRAINMEN FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE.

The Brotherhood of Railroad Trainmen hereby respectfully moves for leave to file a brief *amicus curiae* in this case. The consent of the attorney for the petitioner has been obtained. The consent of the attorney for the respondent was requested but refused.

NATURE OF THE APPLICANT'S INTEREST.

The interest of the Brotherhood of Railroad Trainmen in this case arises from the fact that it is the certified collective bargaining agent for the greater number of operating employees on the American railroads. As such agent, it is the duty and obligation of the Brotherhood to handle all claims for reinstatement made by its members discharged for allegedly executing a false and fraudulent application for employment. The Brotherhood has negotiated a standard provision in its collective bargaining contracts which provides that the railroad must reject the application for employment within a specified period or the applicant will be considered accepted. In the instant case, the Brotherhood is the collective bargaining agent for the petitioner and all other members of his craft and class on respondent railroad. The Brotherhood's contract requires the respondent railroad to reject any application for employment within thirty days. The petitioner, however, was not discharged within the thirty day period but, instead, respondent relied on the alleged misrepresentation at the trial of his suit brought under the Federal Employers' Liability Act, 45 U.S.C. § *et seq.* The trial court held, despite the collective bargaining contract, that petitioner, because of his alleged misrepresentations, was not an employee of respondent and, therefore, could not bring an action under the Federal Employers' Liability Act. The applicant's interest in the directed verdict entered by the trial judge requires reversal of that ruling for two reasons: 1) The Brotherhood has a legitimate interest in seeing that its members are given the opportunity to present their claims under the F. E. L. A. to a jury for its decision. 2) The Brotherhood has an interest in seeing that its collective bargaining contracts are uni-

formly and correctly interpreted so that those contracts cannot be nullified or abrogated by any court in any proceeding whatsoever.

The interest of the Brotherhood in this case will postdate any opinion by this Court. This is so because the decision will be cited to, and construed by, the referees appointed to break the customary deadlocks before the First Division of the National Railroad Adjustment Board, 45 U. S. C. §153. Those referees are still deciding reinstatement cases on the basis of various interpretations made of, and various distinctions which they draw from, the cases of *Minneapolis, St. Paul. & S. Ste. M. R. Co.* v. *Rock*, 279 U. S. 410 (1929) and *Minneapolis, St. Paul & S. Ste. M. R. Co.* v. *Borum*, 286 U. S. 447 (1932), cf. Award 19557, Vol. 74, First Division Awards, NRAB (Holding that *Borum* does not overrule *Rock* but merely requires that the misrepresentation be a material one) with Award 16747, Vol. 119, First Division Awards, NRAB (Holding that court decisions establish that certain wilful and material falsifications nullified the time limitation provided in the applicable rule and stating that the *Rock* case supports the decision denying reinstatement).

Applicant finally states that it is interested in this case because the great majority of the discharges for alleged fraud in the application of employment occur after the employee has asserted his rights under the Federal Employers' Liability Act. In such circumstances, the Applicant suggests that this Court should consider the question as to whether the railroads are violating Section 5 of the Federal Employers' Liability Act, 45 U. S. C. 55, by creating a device which discourages the assertion of the rights of injured employees because of a fear of being discharged.

This Court may well be the only court that can effectively enforce the provisions of 45 U. S. C. §55 because of the

holding in *Union Pacific R. Co. v. Price*, 360 U. S. 601, that an Adjustment Board Award denying reinstatement does not constitute a "money award" under the Railway Labor Act and that such an award is final and binding on the discharged employee.

FACTS AND QUESTIONS OF LAW WHICH MAY NOT BE ADEQUATELY PRESENTED BY THE PARTIES.

In the instant case, the petitioner argued in the trial court, where the only hearing in this case was had, that he was entitled to go to the jury and to establish that there was no misrepresentation and even if there were, any alleged misrepresentation had no causal relationship with the petitioner's accident. Since it is likely that petitioner may pursue the same course in this Court, it is believed that the brief, which *amicus curiae* is requesting permission to file, will contain a more complete argument on those issues arising from the trial court's nullification and disregard of the time limitation, within which the respondent must accept or reject the application for employment, imposed by the collective bargaining contract. If applicant's argument is accepted, it would be dispositive of this case.

Respectfully submitted,

JOHN J. NAUGHTON,
Counsel for Brotherhood of Railroad Trainmen,
139 N. Clark St.,
Chicago 2, Illinois.

CERTIFICATE OF SERVICE

I, John J. Naughton, attorney for the Brotherhood of Railroad Trainmen, movent, do hereby certify that on the 6th day of September 1961, I served the attached Motion of the Brotherhood of Railroad Trainmen for Leave to File a Brief as *Amicus Curiae* upon all parties of record herein by depositing copies thereof in the United States mails, via airmail, postage prepaid, addressed to Mr. Walter W. Burton, Law Building, Princeton, W. Va., and to Sachs and Jenkins, Woodward Building, Washington 5, D. C., attorneys for Petitioner; and to Mr. Joseph M. Sanders, Law and Commerce Building, Bluefield, W. Va., attorney for Respondent.

JOHN J NAUGHTON